TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 251.

THE UNITED STATES EX REL. MARTIN A. KNAPP, JUDSON C. CLEMENTS, JAMES D. YEOMANS, CHARLES A. PROUTY, AND JOSEPH W. FIFER, INTERSTATE COMMERCE COMMISSIONERS, PLAINTIFFS IN ERROR,

vs.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED MAY 10, 1904.

(19342.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 251.

THE UNITED STATES EX REL. MARTIN A. KNAPP, JUDSON C. CLEMENTS, JAMES D. YEOMANS, CHARLES A. PROUTY, AND JOSEPH W. FIFER, INTERSTATE COMMERCE COMMISSIONERS, PLAINTIFFS IN ERROR,

vs.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

INDEX.

	Original.	Print.
Caption	1	1
Petition for mandamus	3	2
Exhibit 1.—Order of the Interstate Commerce Commission, June 3, 1903, in the matter of annual reports under section 20 of the act to regulate commerce	8	5
Exhibit A.—Form of report (omitted in printing per stipulation)	9	5
Motion for allowance of alternative writ of mandamus	10	6
Order setting down time for hearing application for mandamus	11	7
United States marshal's return of certified copy of order to show cause, etc	12	7
Hearing on order to show cause continued to February 2, 1904	13	8
Motion to dismiss petition for writ of mandamus	14	8
Motion to dismiss petition for mandamus taken under advisement by the court	15	9
Motion to dismiss granted; petition dismissed; leave to file bill of exceptions within sixty days	16	9
Certificate of the judge	17	10
Order of continuance	19	10
Petition for writ of error	20	11
Assignment of error	22	12
Order allowing writ of error	24	13
Writ of error	25	13
Clerk's return on writ of error	26½	14
Citation and service	27	14
Certificate of clerk	28	15
Stipulation to omit Exhibit A to Exhibit 1 in printing record	29	16

1 No. .

Supreme Court of the United States.

Transcript of record.

THE UNITED STATES, EX REL., MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company.
} No. 6605.

Law. Mandamus.

Error from the United States Circuit Court, Northern District of Ohio, Eastern Division.

John J. Sullivan, U. S. district attorney, Cleveland, O.;
L. A. Shaver, Washington, D. C., attorneys for plaintiff in error.
F. J. Jerome, Cleveland, Ohio, attorney for defendant in error.

2 UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF OHIO,
Eastern Division, ss.

Record of the proceedings of the circuit court of the United States within and for the eastern division of the northern district of Ohio, in the cause and matter hereinafter stated, the same being disposed of at a regular term of said court begun and held at the city of Cleveland, in said district, on the first Tuesday in February, being the 2nd day of said month in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America, to wit: On the 15th day of March, A. D. 1904.

Present: Honorable Francis J. Wing, United States district judge.

THE UNITED STATES, EX REL., MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILway Company.
} No. 6605. Law. Mandamus.

Said action was commenced on the 20th day of November, A. D. 1903, and proceeded to final disposition at the term and day above written, and during the progress thereof pleadings and papers were filed,

process was issued and returned, and orders of the court were made and entered in the order and on the dates hereinafter stated, to wit:

3 *Petition for mandamus.*

In the circuit court of the United States for the northern district of Ohio.

THE UNITED STATES, EX REL. MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,

vs.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILway Company.

To the honorable circuit court of the United States for the northern district of Ohio:

Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, and Joseph W. Fifer, the relators herein, acting in their capacity as members of the Interstate Commerce Commission, respectfully show:

I. That said Interstate Commerce Commission is a body duly created and organized under an act of Congress, entitled "An act to regulate commerce," approved February 4, 1887.

II. That the Lake Shore & Michigan Southern Railway Company, the respondent herein, is a corporation created under the laws of New York, Pennsylvania, Ohio, Michigan, Indiana, and Illinois, having its principal office at Cleveland, in the State of Ohio, in said district, and is engaged as a common carrier in the transportation by rail, or partly by rail and partly by water, of interstate commerce, and as such common carrier is subject to the provisions of said act to regulate commerce.

III. That by section 12 of said "act to regulate commerce" the Interstate Commerce Commission is "authorized and required to execute and
4 enforce the provisions" of said act, and is given "authority to inquire into the management of the business of all common carriers subject to" such provisions, and "to keep itself informed as to the manner and method in which the same is conducted," and "to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created;" and by section 20 of said act it is provided that the Commission is "authorized to require annual reports from all common carriers subject to the provisions of the act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information," and that "such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the matter of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries

paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business, and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet;" and that such reports "shall also contain such information in relation to rates or regulations concerning fares or freights or agreements, arrangements, or contracts with other common carriers, as the Commission may require."

IV. That under and in conformity with the authority so conferred, the Interstate Commerce Commission has, by an order duly made
5 dated the 3rd day of June, 1903, prescribed the manner and form in which such reports should be made and the contents thereof, and directed that each common carrier subject to the provisions of the "act to regulate commerce," should, "on or before the 15th day of September of each year," file with said Commission a report as so prescribed, "covering the twelve months terminating June 30 of said year," and that a copy of said order be served by mail on each of said common carriers by the secretary of said Commission. A copy of said order is hereto attached as Exhibit I and made a part hereof, and there is attached to said order as Exhibit A thereto and made a part thereof, the form and contents of the report so prescribed.

V. That in pursuance of said order the secretary of said Commission, on or about, to wit, the thirtieth (30th) day of June, 1903, served a copy of said order on the respondent herein, and also furnished said respondent the necessary blanks as prescribed in said order for making out such report for the year ending the thirtieth (30th) day of June, 1903, by mailing the same to R. H. Hill, the auditor of the respondent, at Cleveland, in the State of Ohio, that being the name and address of the officer of respondent designated by respondent as the officer to whom correspondence regarding such report should be addressed, and at the same time and in connection with such order and blanks for such reports, there was mailed to said officer a notice that said reports must be filed with the "Division of Statistics of the Interstate Commerce Commission not later than September 15th" thereafter, the day fixed as aforesaid by the order of the Commission.

VI. That respondent, the said Lake Shore & Michigan Southern Railway Company, failed and neglected to make out and return said report for the year ending June 30, 1903, on or before September 15th of said year, in full as required by the Commission in its said
6 order, Exhibit I hereto, and has not yet made out and returned the same in full, in that it failed to set forth in the report made and returned by it for said year the data or information called for on page 63–A of the form of report attached as Exhibit A to the order of the Commission, Exhibit I hereto, namely the tonnage, ton-mileage, earnings and receipts per ton per mile on grain, hay, cotton, live stock, dressed meats, anthracite coal, bituminous coal, and lumber carried in carload lots; and that said data or information required by the Commission to be given in said report by respondent is necessary to enable the Commission to perform the duties and carry out the objects for which it was created,

in the interest of the public, and that promptness by carriers in furnishing the same on or before the 15th day of September of each year, as required by the Commission, is essential for the purpose, among others, of enabling the Commission to make a full and complete annual report to Congress, which, by section 21 of said act to regulate commerce, is required to be transmitted to said body on or before December 1st of each year.

VIII. That there is no other adequate remedy in the premises than that aforded by the writ of mandamus, and petitioners therefore pray that a writ of mandamus be at once issued from this honorable court, directed to said Lake Shore & Michigan Southern Railway Company, commanding that a report for the year ending June 30, 1903, setting forth the omitted matters above named in Paragraph VI of this petition, as required by the Interstate Commerce Commission, be forthwith made out and filed with said Commission, and for such other orders as may seem to this honorable court proper and necessary.

THE INTERSTATE COMMERCE COMMISSION.
EDWARD A. MOSELEY,
The Secretary thereof, thereunto authorized.

7 [SEAL.]

JOHN J. SULLIVAN,
U. S. Attorney for Relator.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Edward A. Moseley, secretary of the Interstate Commerce Commission, being duly sworn, on his oath deposes and says that the several matters and things in the foregoing petition stated are true in substance and in matter of fact to the best of his knowledge, information, and belief.

EDWARD A. MOSELEY.

Sworn to and subscribed before me this the 18th day of November, 1903.

[SEAL.]

MARTIN S. DECKER,
Notary Public.

A true copy of the petition and exhibit.

EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

(Interstate Commerce Commission seal.)

(Endorsements on petition for mandamus:) No. 6605. The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, vs. The Lake Shore & Michigan Southern Railway Co. Petition for mandamus. Filed Nov. 20, 1903. Irvin Belford, clerk U. S. circuit court, N. D. C.

8 EXHIBIT I, TO PETITION.

#6605.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3d day of June, A. D. 1903.

In the matter of annual reports under section 20 of the "act to regulate commerce."

It is ordered that each and all common carriers subject to the provisions of the "act to regulate commerce" shall make and file with this Commission, on or before the 15th day of September of each year, a report as provided in section 20 of the act to regulate commerce, covering the twelve months terminating June 30 of said year, and that said report shall be in the form of the blank report hereto attached as Exhibit A, and shall contain full and specific answers to all the questions propounded in said form of report and all the information called for therein, whether by questions or forms of tabular statements, or otherwise. In making said report the carrier shall also conform strictly to the instructions and directions set forth in said form of report.

It is further ordered, that each of such common carriers operating lines not wholly within the territorial limits of any one of the "groups" hereinafter set forth, but crossing such territorial limits and being in more than one of said "groups," shall, in addition to the report covering the operations of its entire line or lines, as called for above in Exhibit A hereto, and simultaneously with the making of said report, and for the same period of time, make a further or supplemental report in conformity with the blank form hereto attached as Exhibit B, covering the opertions, respectively, of the portions of its line or lines in each of said "groups," and this report shall contain full and specific answers to the questions propounded and all the information in any way called for in the said blank form, Exhibit B, hereto. The "groups" or territorial divisions referred to above are as follows:

GROUP I.—This group embraces the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

GROUP II.—This group embraces the States of New York, Pennsylvania, New Jersey, Delaware, and Maryland, exclusive of that portion of New York and Pennsylvania lying west of a line drawn from Buffalo to Pittsburg via Salamanca, and inclusive of that portion of West Virginia lying north of a line drawn from Parkersburg east to the boundary of Maryland.

GROUP III.—This group embraces the States of Ohio, Indiana, the southern peninsula of Michigan, and that portion of the States of New York and Pennsylvania lying west of a line drawn from Buffalo to Pittsburg via Salamanca.

GROUP IV.—This group embraces the States of Virginia, North Carolina, South Carolina, and that portion of the State of West Virginia lying south of a line drawn east from Parkersburg to the boundary of Maryland.

GROUP V. This group embraces the States of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, and that portion of Louisiana east of the Mississippi River.

GROUP VI. This group embraces the States of Illinois, Wisconsin, Iowa, Minnesota, the northern peninsula of the State of Michigan, and that portion of the States of North Dakota, South Dakota, and Missouri lying east of the Missouri River.

GROUP VII. This group embraces the States of Montana, Wyoming, Nebraska, that portion of North Dakota and South Dakota lying west of the Missouri River, and that portion of the State of Colorado lying north of a line drawn east and west through Denver.

GROUP VIII. This group embraces the States of Kansas, Arkansas, that portion of the State of Missouri lying south of the Missouri River, that portion of the State of Colorado lying south of a line drawn east and west through Denver, that portion of the State of Texas lying west of Oklahoma, and the Territory of Oklahoma, Indian Territory, and the portion of New Mexico lying northeast of Santa Fé.

GROUP IX. This group embraces the State of Louisiana, exclusive of the portion lying east of the Mississippi River, the State of Texas, exclusive of that portion lying west of Oklahoma, and the portion of New Mexico lying southeast of Santa Fé.

GROUP X. This group embraces the States of California, Nevada, Oregon, Idaho, Utah, Washington, the Territory of Arizona, and that portion of the Territory of New Mexico lying southwest of Santa Fé.

The statistician is authorized to make such deviations from the strict application of the boundaries of the several groups as above described as may appear reasonable in view of the peculiar conditions under which roads operate.

It is further ordered that a copy of this order shall be served, by mail, upon each of such common carriers, and the Secretary of the Commission is hereby directed to make such service.

By the Commission:

EDW. A. MOSELEY, *Secretary.*

Filed Nov. 20, 1903. Irvin Belford, clerk, U. S. circuit court, N. D. C.

* * * * * * *

10 *Motion for the allowance of alternative writ of mandamus upon the petition.*

In the circuit court of the United States for the northern district of Ohio.

THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, *vs.* THE LAKE SHORE & MICHIGAN SOUTHERN Ry. Company.	No. 6605. Motion.

The relator herein moves the court for the allowance of an alternate writ of mandamus against the defendant herein, upon the petition in this cause, as provided for by law.

JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio.

(Endorsements on motion:) No. 6605. Circuit court of United States, northern district of Ohio. The United States ex rel., etc., vs. The Lake Shore & Michigan Southern Railway Company. Motion. Filed Jan. 19, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O. John J. Sullivan, United States atty., N. D. O.

11 *Order setting down time for hearing application for mandamus.*

October term, A. D. 1903, to wit: January 19, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

In the circuit court of the United States for the northern district of Ohio.

THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILway Company. } No. 6605. Order.

The relator now making application for the allowance of writ of mandamus herein, the court orders that said application be set down for hearing on the twenty-third day of January, 1904, at 11-00 o'clock a. m. and that due notice of said time and place be given to the said defendant, together with a copy of the petition filed herein, at which said time the said defendant may then and there show cause why said writ should not be allowed.

12 *U. S. marshal's return of certified copy of order to show cause, etc.*

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

U. S. marshal's return.

Received copies of writs in the above-entitled cause at Cleveland, Ohio, on January 19, 1904, and on the same day and place I served the same on the within-named The Lake Shore & Michigan Southern Railway Company by delivering a true and certified copy of each writ, with all endorsements thereon, to W. H. Marshal, general manager of said The Lake Shore & Michigan Southern Railway Company, the president, chairman of the board of directors or trustees, treasurer or other chief officer of said The Lake Shore & Michigan Southern Railway Company could not be found in my district.

F. M. CHANDLER, *U. S. Marshal.*

Fees:

Service (petition & exhibit)	$2.00
Travel do.	.06
Service (certified copy motion)	2.00
Travel do.	.06
Service (certified copy order)	2.00
Travel do.	$ .06
	$6.18

By P. D. SAMPSELL, *Deputy.*

(Endorsements, when returned:) U. S. circuit court, northern district of Ohio. Eastern division. No. 6605. United States vs. The Lake Shore & Michigan Southern Railway Company. U. S. marshal's return of certified copy of order to show cause, etc. Filed Jan. 21, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O.

13 *Hearing on order to show cause continued to February 2, 1904.*

October term, A. D. 1903, to wit, January 23, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

UNITED STATES, EX REL., ETC.,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY Company. } No. 6605. Law. Mandamus.

By consent of parties, the hearing on the order to show cause heretofore issued herein is continued until February 2, 1904.

14 *Motion to dismiss petition for writ of mandamus.*

Circuit court of the United States, northern district of Ohio. No. 6605. Law docket.

THE UNITED STATES, EX REL., MARTIN A. KNAPP, JUDSON C. CLEMENTS, JAMES D. YOEMANS, CHARLES A. PROUTY, JOSEPH W. FIFER, Interstate Commerce Commissioners,
v.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY Company.

Motion to dismiss petition for writ of mandamus.

And now comes the defendant, The Lake Shore & Michigan Southern Railway Company, and without waiving any right to answer to the merits or to plead further, respectfully moves that the aforesaid petition for writ of mandamus be dismissed on the ground that this honorable court has no original jurisdiction to issue a writ of mandamus as prayed for by the relators.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,
By F. J. JEROME, *Attorney.*

(Endorsements on motion to dismiss petition for writ of mandamus:) No. 6605. In U. S. C. C. N. D. of Ohio, E. D. United States, ex rel., etc., vs. L. S. & M. S. Ry. Co. Motion to dismiss petition for writ of mandamus. Filed Jan. 28, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O.

15 *Motion to dismiss petition for mandamus taken under advisement.*

February term, A. D. 1904, to wit, February 24th, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

THE UNITED STATES, EX REL., ETC.,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN Railway Co. } No. 6605. Mandamus.

This day this cause came on to be heard on the motion of defendant to dismiss the petition for mandamus heretofore filed herein by plaintiff, and was argued by counsel and taken under advisement by the court.

16 *Motion to dismiss granted; petition dismissed; leave to file bill of exceptions within 60 days.*

February term, A. D. 1904, to wit, March 15, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

UNITED STATES EX REL. MARTIN A. Knapp et al.
vs.
THE LAKE SHORE & MICHIGAN Southern Railway Company. } No. 6605. Law. Mandamus.

This cause having been heard and submitted to the court on a previous day of the present term on the motion of defendant to dismiss same for want of jurisdiction, it is now ordered by the court, on consideration thereof, and being fully advised in the premises, that said motion be, and the same is hereby, granted and said petition dismissed at costs of petitioners; to which ruling of the court the petitioners, by its attorneys, then and there excepted, and 60 days is given for allowance and filing of bill of exceptions.

17 *Certificate of judge.*

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff, *vs.* THE LAKE SHORE & MICHIGAN SOUTHERN Railway Company, defendant.	Certificate of judge that a question of jurisdiction is in issue, under sec. 5 of the act of March 3, 1891.

In this cause I hereby certify that the judgment and order of dismissal of the petition of the plaintiff herein is based solely on the ground that the cause set forth in the petition, in my opinion, is not one of which the circuit court of the United States has any jurisdiction; and that treating the motion to dismiss petition for writ of mandamus, filed January 28th, 1904, as presenting this question of jurisdiction, and acting also independently of the motion, and on the court's own motion, the suit is dismissed only for the reason above stated; that is, that there is no jurisdiction of the circuit court of the United States regarding the controversy.

This certificate is made conformably to act of Congress of March 3rd, 1891, chapter 517, and the order and judgment of the court filed and entered herein is made a part of the record and will be certified and sent up as a part of the proceedings, together with this certificate.

FRANCIS J. WING,
District Judge, holding the Circuit Court of the United States for the Northern District of Ohio.

18 (Endorsements on certificate of judge:) No. 6605. In the circuit court of the United States for the northern district of Ohio, eastern division. The United States, ex rel., Martin A. Knapp et al., vs. The Lake Shore & Michigan Southern Railway Co. Certificate of judge. Filed April 1, 1904. Irvin Belford, clerk. U. S. circuit court, N. D. O.

19 *Order of continuance.*

February term, A. D. 1904, to wit: April 4, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

THE UNITED STATES EX REL., ETC., *vs.* THE L. S. & M. S. RY. CO.	No. 6605. Law. Mandamus.

This cause is continued to the next term of this court.

20 *Petition for writ of error.*

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff, *vs.* THE LAKE SHORE & MICHIGAN SOUTHERN RAILway Company, defendant.	At law. Petition for writ of error.

Now comes the United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff herein, and says:

That on or about the fifteenth day of March, A. D. 1904, the circuit court entered a judgment herein in favor of the defendant, and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio,
Attorney for Plaintiff.

21 (Endorsements on petition for writ of error:) No. 6605. In the circuit court of the United States, for the northern district of Ohio, eastern division. The United States ex rel. Martin A. Knapp, et al., vs. The Lake Shore & Michigan Southern Railway Co. Petition for writ of error. Filed April 14, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O. John J. Sullivan, U. S. attorney.

22

Assignment of error.

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN Railway Company, defendant.
} Assignment of error.

The plaintiff in this cause, in connection with the petition for writ of error, makes the following assignment of error, which it avers occurred on the trial of the cause, to wit:

The court erred in granting the motion filed by the defendant to dismiss the petition for writ of mandamus, which motion was as follows:

"Circuit court of the United States, northern district of Ohio.

"THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
v.
THE LAKE SHORE & MICHIGAN SOUTHERN Railway Company.
} No. 6605. Law. Docket.

"Motion to dismiss petition for writ of mandamus.

"And now comes the defendant, the Lake Shore & Michigan Southern Railway Company, and without waiving any right to answer to
23 the merits or to plead further, respectfully moves that the aforesaid petition for writ of mandamus be dismissed on the ground that this honorable court has no original jurisdiction to issue a writ of mandamus as prayed for by the relators.

"THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,
"By F. J. JEROME, *Attorney.*"

and in dismissing the said petition of the plaintiff, and in rendering judgment against the plaintiff.

Wherefore the plaintiff prays that the judgment of the said circuit court be reversed.

JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio,
Attorney for Plaintiff.

(Endorsements on assignment of error:) No. 6605. In the circuit court of the United States for the northern district of Ohio, eastern division. The United States ex rel. Martin A. Knapp, et al., vs. The Lake Shore & Michigan Southern Railway Co. Assignment of error. Filed, April 14, 1904. Irvin Belford, clerk U. S. circuit court, N. D. O. John J. Sullivan, U. S. attorney.

24 *Order allowing writ of error.*

April term, A. D. 1904, to wit, April 14th, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

THE UNITED STATES EX REL. MARTIN A. KNAPP, JUDSON C. CLEMENTS, JAMES D. YEOMANS, CHARLES A. PROUTY, JOSEPH W. FIFER, Interstate Commerce Commissioners, plaintiff.
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, defendant.
} No. 6605. Law.

This 14th day of April, A. D. 1904, comes the plaintiff, by John J. Sullivan, United States attorney for the northern district of Ohio, its attorney, and files herein and presents to the court its petition, praying for the allowance of a writ of error, and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of error.

25 *Writ of error.*

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. KNAPP, JUDSON C. CLEMENTS, JAMES D. YEOMANS, CHARLES A. PROUTY, JOSEPH W. FIFER, Interstate Commerce Commissioners, plaintiff.
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, defendant.
} Writ of error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the circuit court of the United States for the northern district of Ohio, eastern division, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between the United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff, and The Lake Shore & Michigan Southern Railway Company, defendant, a manifest error has happened, to the great damage of the said The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, as by its

complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein
26 given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the 14th day of May next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of April, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundredth and twenty-eighth.

[SEAL.]

IRVIN BELFORD,
Clerk of the Circuit Court of the United States
for the Northern District of Ohio,
By B. C. MILLER, *Deputy Clerk.*

Allowed by—

FRANCIS J. WING,
District Judge, holding the Circuit Court of the United States
for the Northern District of Ohio.

26½ United States circuit court, northern district of Ohio.

In the pursuance of the command of the within writ of error, I, Irvin Belford, clerk of the United States circuit court within and for said northern district of Ohio and the eastern division thereof, do herewith transmit under the seal of said court a true, full, and complete copy of the record and proceedings of said court in the cause and matter in said writ of error stated, together with all things concerning the same, to the Supreme Court of the United States, together with said writ of error and the citation to said defendant in error.

Witness my official signature and the seal of said court at Cleveland, O., in said district, this 21st day of April, A. D. 1904, and in the 128th year of the Independence of the United States of America.

[SEAL.]

IRVIN BELFORD, *Clerk,*
By B. C. MILLER, *Deputy Clerk.*

(Indorsed: Filed Apr. 21, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O.)

27 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Lake Shore & Michigan Southern Railway Company, greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of

Washington on the 14th day of May next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Ohio, wherein The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 14th day of April, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundred and twenty-eighth.

FRANCIS J. WING, *Judge.*

27½ *U. S. Marshal's return.*

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

Received this citation at Cleveland, Ohio, on April 14th, 1904, and on the same day at the same place, I served the same on the within-named defendant in error The Lake Shore & Michigan Southern Railway Company by handing a true and certified copy hereof with all endorsements thereon to W. H. Marshall, general manager of said defendant in error The Lake Shore & Michigan Southern Railway Company, the president, chairman of the board of directors or trustees, cashier, secretary, treasurer, or other chief officer of said company could not be found within my district.

F. M. CHANDLER, *U. S. Marshal.*
By P. D. SAMPSELL, *Deputy.*

Fees:

Service.....	$2.00
Travel	.06
Total	2.06

28 *Certificate of clerk.*

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company.
No. 6605. Law. Mandamus.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify that the annexed and foregoing pages

contained a full and true copy of the final record, petition for writ of error, assignment of errors and all proceedings in said cause; and there is embraced in said record, a true copy of the certificate of the court in said cause, the originals of all of which are now in my custody as clerk of said court. Also the writ of error and citation issued and allowed in this cause are annexed to and transmitted with said record.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Cleveland, Ohio, in said district, on this 28th day of April, A. D. 1900, and of the 128th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk U. S. Circuit Court N. D. O.*,
By B. C. MILLER, *Deputy Clerk.*

29 Supreme Court of the United States, October term, 1903.

THE UNITED STATES EX REL. MARTIN A. Knapp et al., Interstate Commerce Commissioners, plaintiff in error,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN Ry. Co.
} No. 691.

Stipulation.

It is hereby stipulated by counsel for the parties to the above-entitled cause that in the printing of the transcript of the record therein, "Exhibit A to Exhibit 1, to petition, form of report," being blank form of annual report to the Interstate Commerce Commission of the United States for the year ending June 30, 1903, appearing at page 9 et seq. of said transcript, shall be omitted by the clerk; and that in lieu thereof twenty-five copies of said form, as it appears in said record, shall be filed with the clerk for the use of the court in the consideration of the cause.

H. M. HOYT,
Solicitor-General.
GEO. C. GREENE,
Counsel for Defendant in Error.

30 (Indorsed:) File No. 19342. Supreme Court U. S. October term, 1903. Term No., 691. The United States ex rel. Martin A. Knapp et al., Interstate Commerce Commissioners, P. E., vs. The Lake Shore & Michigan Southern Railway Company. Stipulation omitting part of record in printing. Filed May 20th, 1904.

(Indorsement on cover:) File No. 19342. N. Ohio C. C. U. S. Term No., 251. The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty & Joseph W. Fifer, Interstate Commerce Commissioners, plaintiffs in error, vs. The Lake Shore and Michigan Southern Railway Company. Filed May 10th, 1904. File No., 19342.

O